

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 559

DAISY LARGENT,

Appellant,

vs.

STATE OF TEXAS.

APPEAL FROM THE COUNTY COURT OF LAMAR COUNTY, TEXAS.

STATEMENT AS TO JURISDICTION.

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COUNTY COURT OF LAMAR COUNTY, TEXAS

STATE OF TEXAS,

vs.

DAISY LARGENT,

Appellee,

Appellant.

APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

JURISDICTIONAL STATEMENT.

In compliance with Rule 12 (1) of the Supreme Court of the United States, as Amended April 6, 1942, appellant files her statement disclosing the basis upon which she contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. This case presents a state of facts within the jurisdiction of this court.

Texas Legislation Drawn in Question.

The legislation, the constitutionality and validity of which is here drawn in question is an ordinance of the City of Paris, Texas, known as Ordinance 612 reading in part as follows:

"Section 1:

"From and after the passage of this ordinance it shall be unlawful for any person, firm or corporation to solicit orders for books, wares, merchandise or any household article of any description whatsoever within the residence portion of the City of Paris, or to sell books, wares, merchandise or any household article of any description whatsoever within the residence district of the city of Paris, or to "canvass, take census without first filing an application in writing with the Mayor and obtaining a permit, which said application shall state the character of the goods, wares or merchandise intended to be sold or the nature of the canvass to be made, or the census to be taken, and by what authority. The application shall also state the name of the party desiring the permit, his permanent street address and number while in the city and if after investigation the Mayor deems it proper or advisable he may issue a written permit to said person for the purpose of soliciting, selling, canvassing or census taking within the residence portion of the city which permit shall state on its face that it has been issued after a thorough investigation.

Section 2:

The issuance of such permit by the Mayor shall not confer upon the holder thereof any rights to enter any residence contrary to the wishes of the owner or occupant of same and the holder of any such permit shall be respectful and considerate in dealing with the occupants of the residences and on complaint of any person this permit may be revoked and canceled by the Mayor.

Section 3:

The issuance of this permit shall not be held to confer any right on the holder thereof to peddle or sell merchandise without first obtaining a peddlers license and paying the fee therefor.

Section 4:

Any person, firm or corporation violating any or all of the provisions of this ordinance or who attempts to solicit for the sale of books, wares, merchandise or any household article whatsoever or to sell any of the same or to canvass or to take census within the residence district of the City of Paris without first obtaining a permit from the Mayor shall be deemed guilty of a misdemeanor and on conviction thereof in Corporation Court, be fined in any sum not less than \$5.00 or more than \$200.00.

The entire of the above ordinance appears in the record (S. F. 2; R. 10).

The County Court of Lamar County, Texas, the highest court of Texas in which a decision can be obtained in this cause, held that the ordinance was valid and constitutional and that it did not abridge appellant's rights of free speech, free press and her freedom to worship and serve Almighty God according to the dictates of her conscience and as commanded by Him. Said County Court also held that said ordinance was not unconstitutional because unreasonable and in excess of the police powers of the state and city contrary to the fourteenth amendment. The court also refused to hold that the ordinance conferred arbitrary and discriminatory power in the Mayor contrary to the fourteenth amendment to the United States Constitution. That court of last resort of the State of Texas sustained the application of the ordinance to appellant and decided in favor of the validity of the same under the federal constitution

and held that it was constitutional on its face and as construed and applied.

County Court of Lamar County is Court of Last Resort.

Appellant was fined only \$100.00 and costs by the County Court on appeal from the Corporation Court of Paris, Texas. The County Court was advised by both parties that in event of a decision adverse to appellant they desired a fine be assessed so as to confer jurisdiction in the Court of Criminal Appeals. The ordinance allowed a fine in excess of \$100.00 and costs but the trial court refused to render such a judgment as to permit further appeal by appellant to a higher court in Texas. Article 53 of the Code of Criminal Procedure for Texas, 1925, provides that the Court of Criminal Appeals of Texas does not have jurisdiction of an appeal from a judgment rendered by the County Court on trial *de novo* on appeal from a Corporation or Justice Court where the fine assessed in the County Court does not exceed the sum of \$100.00 and costs. Other articles of the Code of Criminal Procedure confers exclusive appellate jurisdiction of misdemeanor offenses tried in the County Court where the fine does not exceed \$100.00 and costs on trial *de novo* in the County Court. *Ex parte Largent*, 162 S. W. (2d) 419. The County Court of Lamar County is the court of last resort and the highest court in the State of Texas in which a decision could be had in this cause, although said County Court is not the highest criminal court of appeals in the state. This Court has so held in other cases. *Thomas v. Rabb*, 267 U. S. 564; *Bacon v. Texas*, 163 U. S. 207; *Sullivan v. Texas*, 207 U. S. 416, and *S. A. & A. P. R. Co. v. Wagner*, 241 U. S. 476.

Timeliness.

The judgment of the County Court assessing a fine of \$100.00 and costs was rendered and entered on the 2nd day of November, A. D. 1942 (R. 55). The judgment of the County Court of Lamar County, Texas, is now a final judgment. This petition for appeal is duly presented and filed within three months from the date of such final judgment and is therefore timely as required by law.

Statement of Nature of Case and Rulings of Court.

The rulings of the County Court of Lamar County are such as to bring this case within the jurisdictional provisions relied on above.

Appellant is a citizen of the United States of America and is native born. She is a widow of a veteran of the first *world war* and depends entirely for her support and maintenance upon a pension received from the federal government. From the modest allowance thus received she maintains a home and cares for several minor children. Although she is one of Jehovah's witnesses and engages in preaching the gospel from house to house in the City of Paris by means of distributing literature she does not receive any income or profit therefor but contributes part of her allowance to such work by giving away free of charge many books and booklets explaining the Bible and by distributing books at less than contributions received by her for them (S. F. 23, R. 31).

She is an ordained minister of Jehovah God and a duly authorized representative of the Watch Tower Bible & Tract Society, a charitable, non-profit corporation organized under the religious corporation laws of Pennsylvania with main office at Brooklyn, New York. Appellant pos-

sesses credentials attesting to the fact that she is a duly ordained minister of Jehovah God and a representative of said charitable corporation.

Appellant is in a covenant with Jehovah God to preach the Gospel of the Kingdom or Theocracy under Christ Jesus by following in his footsteps and those of the apostles by calling from house to house and presenting the gospel message in printed form so that the people might read and study the same in the quiet of their homes and learn the way to life everlasting in peace and happiness. She believes that she must continue in such preaching activity until the "cities are desolate and without inhabitant". She cannot apply for or obtain a permit because to do so would be an act of disobedience to Jehovah God and an insult to His commandment that 'This gospel must be preached in all the world for a witness and then shall the end come' (Matthew 24:14). She said concerning the provision of the ordinance requiring a permit that she must "Obey God rather than men" (Acts 5:29; Acts 4:19). She further said that she did not apply for a permit because the constitution of the United States exempted a minister from the requirement of submitting to the censorship of city officials before preaching the gospel. The evidence shows that in addition to the scriptural command of preaching from house to house there is a practical reason for thus preaching. That the great majority of residents in the United States do not attend *Church* of any kind on Sunday or other days. That therefore the only place to contact the people so as to reach the greater number is in the homes of the people. Appellant said that if she failed or refused to carry the message of the Kingdom and the warning concerning the near approach of the "Battle of Armageddon" and thus enable all people of good will towards Almighty God to obtain a means of

escape from such disaster and to life everlasting because of *fear of man* or the ordinance in question that she would suffer literal everlasting destruction at the hands of Almighty God Jehovah for failing to 'warn the wicked to turn from their wicked way' (Ezekiel 3:18-19; 33:8-9). Therefore she has no alternative except to continue to preach from house to house without first obtaining a permit from the Mayor of Paris.

The undisputed evidence is that appellant went from house to house in the city and approached each home in an orderly and proper manner by knocking at the door or ringing the doorbell. If anyone came to the door she presented her "testimony card" which explained the purpose of her call. If the householder was interested she exhibited the book *CHILDREN* and the booklet *HOPE* and advised that they could be obtained and delivered then and there by appellant if the householder would promise to read and study them. The one thus obtaining the book and booklet was afforded an opportunity of contributing to aid in further publication of the literature the sum of twenty-five cents. If the person could not contribute 25 cents a less sum was accepted and if too poor to contribute any amount whatsoever the book and booklets were left without charge or contribution.

The undisputed evidence shows that appellant does not profit from any contributions received because it costs 20 cents to print the book and 1 cent to print the booklet. That with each set of book and booklet distributed the appellant mailed a series of three study courses through the mails to the recipient that cost the appellant the sum of 4½ cents postage and for which appellant did not receive any additional compensation. Appellant also testified that she gave away many books and booklets without any contribution each month and that her preaching ac-

tivity was therefore carried on at a loss and without profit whatsoever.

The evidence is undisputed that appellant did not act offensively or annoy or argue with any householder whom she met and that she did not attempt force or actually force herself or her message upon anyone who was not willing to listen or receive the literature. If any householder said that they were not interested or did not want the literature she quietly passed on to the next house.

The literature thus distributed by the appellant did not relate to any commercial object or venture but pertains solely to explanation of Bible prophecies and shows how they are being fulfilled in modern times for the guidance and direction of people of good will towards God who love righteousness. The contents points out that the rapid advance of dictatorial-totalitarian governments is under the direction of Satan the Devil for the purpose of turning all mankind against Jehovah God and to destroy those who refuse to violate their covenant with Almighty God to proclaim the Theocracy or God's kingdom as the only hope from the *abomination of desolation*. Such circumstance is foretold as one of the strongest pieces of circumstantial evidence that the Battle of Armageddon is near at hand which will result in the destruction of all wicked totalitarian governments together with all political, ecclesiastical, and commercial elements of the Devil's organization and all persons supporting same against God's Kingdom under Christ Jesus.

The evidence shows the primary aim of the appellant is not to *only* distribute literature but in addition to bringing to attention of all persons the above message she establishes Bible studies, free of charge and without any contributions, in the homes of the people who obtain the literature, read it and desire to learn more concerning God's kingdom.

The above statement of facts appears in the evidence adduced on the trial (S. F. 1-42; —).

Corporation Court Proceedings.

Appellant was charged by complaint in the Corporation Court of Paris, Texas, with an alleged violation of the above described ordinance because she did not have a permit required thereby (R. 2). Among other things, the Complaint charged that the defendant-appellant sold books from house to house in the residential district without applying for or obtaining a permit required by the said ordinance (S. F. 1; R. 2). Upon trial in the Corporation Court appellant urged a motion to quash on the grounds the ordinance was unconstitutional (R. 3). The appellant was found guilty as charged in the complaint filed in the corporation court and duly appealed from the judgment of said court by filing a bond (S. F. 3-5; R. 2A-2B).

County Court of Lamar County Proceedings.

The trial in the County Court of Lamar County was *de novo* and evidence was given entire anew (S. F. 1-42; R. 9-50). In the time and manner required by law appellant duly filed her motion to quash the complaint in which appellant attacked the ordinance because it was unreasonable, arbitrary and in excess of the police power, provided for the unlimited exercise of arbitrary discretion on the part of the Mayor and also on its face and as construed and applied because it abridges appellant's rights of freedoms of speech, press and of worship of Almighty God according to the dictates of conscience contrary to the First and Fourteenth Amendments to the United States Constitution (R. 3). The motion was overruled and appellant excepted (R. 4). A final judgment convicting the appellant was rendered and entered by the County Court

and thereby appellant was fined \$100.00 and costs (R. 55). Before the court rendered the judgment and at the close of all the evidence the appellant duly filed and presented her motion for a judgment and a finding of not guilty for and on account of each of the above reasons urged in the motion to quash. The motion for a judgment was denied and appellant excepted (R. 5-7). In open court and in the manner required by law the appellant excepted to the final judgment and gave notice of appeal to the United States Supreme Court (R. 55).

The County Court of Lamar County, as well as the Corporation Court, duly passed upon each of said federal questions or assignments attacking the validity of the ordinance and said court held it valid and constitutional, both on its face and as applied and held that the First and Fourteenth Amendments to the United States Constitution had not been violated in applying the ordinance to the activity of appellant.

In the petition for appeal and the assignments of error filed with this jurisdictional statement, appellant complains of the judgment of the County Court of Lamar County, Texas, for and on account of each of the grounds set forth in her motions to quash and for a judgment of acquittal filed in said court.

Grounds and Decisions Sustaining Appellate Jurisdiction of the United States Supreme Court and Showing Federal Questions Involved on Appeal.

FIRST.

The ordinance in question, both on its face and as construed and applied to appellant, is violative of the federal constitution in that it abridges appellant's freedoms of speech, of press and of worship of Almighty God according

to the dictates of her conscience and as commanded by Jehovah God, all contrary to the First and Fourteenth Amendments to the United States Constitution.

SECOND.

The ordinance in question is void upon its face because by its terms it is in excess of the police power of the State of Texas and the City of Paris and is unreasonable and arbitrary in the means employed which have no reasonable relation to the ends aimed for nor the police powers of the state and by reason thereof it violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

THIRD.

The ordinance is void on its face and as applied because it confers arbitrary and discriminatory powers upon the mayor of the city of Paris in that there is no instruction or limitation upon the exercise of his unlimited discretion conferred in the Mayor to grant or refuse permits that may be issued under the ordinance. Therefore it denies defendant appellant of her liberty and property without due process of law and equal protection of the laws contrary to the Constitution of Texas and the Fourteenth Amendment to the United States Constitution.

Discussion.

The failure on the part of the County Court to assess a fine in excess of \$100.00 and costs makes the County Court of Lamar County the highest court in the state of Texas in which a decision can be had and the court of last resort in this particular case. The case was *de novo* on appeal from the corporation court of the city of Paris and according to the provisions of Article 53 of the Code of Criminal

Procedure of Texas the Court of Criminal Appeals does not have power and jurisdiction to review this conviction on appeal. This court has repeatedly held that it will take jurisdiction on appeal directly from trial courts and intermediary appellate courts of the state where by rule or statute the higher or highest appellate courts do not have power to review the convictions. See *Thomas v. Rabb*, 287 U. S. 564, where an appeal was noted: "probable jurisdiction" and in which the order allowing the appeal was signed by the County Judge of Rains County, Texas. See also *Bacon v. Texas*, 163 U. S. 207, and *Sullivan v. Texas*, 207 U. S. 416, 422.

The ordinance on its face imposes censorship of the press and of speech equally vicious as the ancient censorship of the press that prevailed in England and later in some of the colonies prior to the revolution. See *Near v. Minnesota*, 283 U. S. 697. A similar ordinance providing for the issuance of a permit from the City Manager of the City of Griffin, Georgia, as a condition precedent to the right to distribute literature in the city was held to be void on its face and unconstitutional by this Court in the case of *Lovell v. Griffin*, 303 U. S. 444. There this Court said: "Whatever the motion which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship." The Town of Irvington ordinance provided that no person could canvass, solicit or distribute circulars, or other matter or call from house to house "without first having reported to and received a written permit from the Chief of Police". There the court held that the most effective instruments in the dissemination of information and opinion were pamphlets and that the most effective and proper way of distributing them with the people is "at the homes of the people". The ordinance was declared

invalid because it provided for and allowed unconstitutional censorship of the freedom of the press and speech. See *Schneider v. State*, 308 U. S. 147. The ordinance in question is not unlike the ordinance declared by this Court to be unconstitutional in the *Schneider* case, *supra*. We submit that the provisions of the ordinance here is substantially the same as that statute of the State of Connecticut declared invalid because providing for prior censorship of the exercise of freedom to worship Almighty God in the case of *Cantwell v. Connecticut*, 310 U. S. 296. The ordinance is also similar to that held invalid by the Supreme Court of Florida in the case of *State, ex rel. Hough v. Woodruff*, 2 So. (2nd) 577. See also an opinion by the same court in the case of *State, ex rel. Wilson v. Russell*, 1 So. (2nd) 569. Reference is here made to *Borchert, et al., v. Ranger*, 2 Fed. Supp. 577. See also the case of *Village of South Holland v. Stein*, 373 Ill. 472, by the Supreme Court of Illinois where the village of South Holland made it unlawful for anyone to canvass for orders of goods, etc., or solicit or sell merchandise from house to house without obtaining a solicitor's permit from the village board. The Supreme Court of Illinois held that the conviction violated the State and Federal constitutions. In the recent decision of this Court, *Jones v. Opelika*, 62 S. Ct. 1231, this Court says: "In dealing with these delicate adjustments this Court denies any place to administrative censorship of ideas or capricious approval of distributors. . . . In *Lovell v. Griffin*, 303 U. S. 444, we held invalid a statute which placed the grant of a license within the discretion of the licensing authority. By this discretion, the right to obtain a license was made an empty right. Therefore the formality of going through an application was naturally not deemed a prerequisite to insistence on a constitutional right."

The ordinance is admittedly not regulatory because one who obtains the permit is entitled to go about the town at all hours and call at all places in the residential section without interference from the licensing authority or the city of Paris. The means employed by the city of Paris to interfere with the exercise of a constitutional right must yield to the stronger provisions of the Federal Constitution guaranteeing the freedoms here claimed to be abridged. *Jay Burns Baking Co. v. Bryan*, 264 U. S. 504; Freund's "The Police Power," p. 133, s. 143; *Herndon v. Lowry*, 301 U. S. 242; *United States v. Carolene Products Co.*, 304 U. S. 144, 152-153; and *Schneider v. State*, *supra*.

It cannot be reasonably argued that because the appellant received money contributions to help partially defray the cost of publication of the literature that she can be required to obtain a permit. To hold to such a doctrine would mean the end of constitutional liberties in this country and would leave the exercise of the four freedoms only to those who are of the *well-to-do* and ultra-rich class who can give away literature free or afford more exclusive means of dissemination of information, such as the radio and the public press, etc.

For the above reasons we submit that the County Court of Lamar County has committed fundamental error and ruled directly contrary to controlling decisions of this Court, and has so far departed from the usual and customary course and path of constitutional law as to require the Supreme Court of the United States to exercise its power to correct the same in these proceedings.

Conclusion.

For sake of brevity, reference is here made to petition for appeal filed in this cause, with which we incorporate, by such reference, each and every assignment of error

therein contained and hereby make the same a part hereof to show that substantial questions were presented to the County Court of Lamar County, Texas.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the courts below disposed of important Federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and regular course of the judicial procedure of American courts as to call for this Court's power of supervision to halt the same.

Confidently and respectfully submitted,

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